

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

JEFFREY JOSEPH CLODY,

Defendant and Appellant.

G053109

(Super. Ct. No. 08CF0527)

O P I N I O N

Appeal from a postjudgment order of the Superior Court of Orange County, Kazuharu Makino, Judge. (Retired judge of the Orange Super. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Richard Jay Moller, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

*

*

*

Defendant Jeffrey Joseph Clody appeals from an order denying his petition for relief under Proposition 47. In 2008 defendant pleaded guilty to first degree burglary (Pen. Code, §§ 459, 460, subd. (a), all further statutory references are to this code) and the court sentenced him to two years in prison as agreed.

In December, 2015 defendant filed in propria persona a petition for resentencing under section 1170.18, subdivision (a), or alternatively for reduction to a misdemeanor under section 1170.18, subdivision (f), both enacted as part of Proposition 47. The court denied the petition and explained, “first degree burglary is not an eligible charge.” This appeal followed.

We appointed counsel to represent defendant on appeal. Counsel filed a brief summarizing the proceedings and facts of the case and advised the court he found no arguable issues to assert on defendant’s behalf. (*Anders v. California* (1967) 386 U.S. 738; *People v. Wende* (1979) 25 Cal.3d 436.) To assist us in our independent review of the record, counsel suggested we consider the issues discussed below.

Counsel and this court both notified defendant that he could file a supplemental brief on his own behalf. However, we received no supplemental brief from him and the time to file one has passed.

DISCUSSION

We have independently reviewed the entire record according to our obligations under *Anders v. California*, *supra*, 386 U.S. 738 and *People v. Wende*, *supra*, 25 Cal.3d 436, and we have found no arguable issues on appeal. The court correctly ruled first degree residential burglary is not among the offenses eligible for resentencing or reduction to a misdemeanor under Proposition 47. (§ 1170.18, subd. (a).) Furthermore, defendant did not have a Sixth Amendment right to counsel at the initial eligibility stage of his petition. (*People v. Rouse* (2016) 245 Cal.App.4th 292, 299; cf. *People v. Ortiz* (2016) 243 Cal.App.4th 854, 862 [no Sixth Amendment right to a jury trial at a hearing to establish eligibility for Proposition 47 relief].)

DISPOSITION

The order is affirmed.

THOMPSON, J.

WE CONCUR:

ARONSON, ACTING P. J.

FYBEL, J.